IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 85 of 2004

MUMTAZ AHMED
V/S
BINDU KHAN & ANR

Mr. RK THANVI, for the appellant / petitioner

Mr. JK BHAIYA, for the respondent

Date of Order : 15.11.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties at length, and perused the record.

It was contended by learned counsel for the appellant that the tenancy relates to 86 sq. yards of land, while the plaintiff has purchased only 58.20 sq. yards of land, and therefore, the present suit is not maintainable. In my view, this contention cannot be accepted, firstly for the reason that in view of the judgment of Hon'ble the Supreme Court in Nalakath Sainuddin Vs. Koorikadan Sulaiman, reported in 2002(2) Apex Court Judgments 623 (SC), even if it is assumed that a part of the rented premises is sold by the landlord, the plaintiff can maintain the suit for the portion of the land purchased, as, such transfer results into statutorily splitting of tenancy. In that view of the matter, I do not find any force in this submission. It is significant to note that

the plaintiff had filed the suit for the premises as described in para 1 and 2 of the plaint, and the decree relates to those premises only.

The other submission made is that the learned Courts below have erred in finding the reasonable and bonafide necessity of the plaintiff, and that the learned lower Appellate Court has erred in reversing the finding of the learned trial Court on the question of comparative hardship. In my view, this contention also has no force. The suit was filed initially by the plaintiff Alladin, who died, and after his death, the suit was got amended, and the requirement, as pleaded in the amendment, was gone into by the Court below during evidence, and has been found to be established. Significantly, the case of the plaintiff in the original plaint was also about having purchased the premises for residence, and carrying on business, as the original plaintiff-landlord Bhadarmal has also filed suit for eviction. Even after death of Alladin the LRs have also maintained that very stand, and it has come on record that the suit of Alladin had been decreed upto Hon'ble the Supreme Court, and the possession had to be delivered by the plaintiff. In such circumstances, if the plaintiff requires the premises for carrying on business, as found by the learned Courts below, it cannot be said that the finding requires any interference.

Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

However, at the request of the learned counsel, the appellant is given one year's time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decreetal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N P GUPTA),J.

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